

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REVIEW OF AN AGREEMENT )  
BETWEEN GTE SOUTH INCORPORATED ) CASE NO. 99-398  
AND DSLNET COMMUNICATIONS LLC )  
PURSUANT TO 47 U.S.C. 252(i) )

O R D E R

On September 22, 1999, GTE South Incorporated ("GTE") and DSLnet Communications LLC ("DSLnet") submitted to the Commission their negotiated agreement for the interconnection of their networks. DSLnet is purporting to adopt the interconnection agreement between GTE and Dakota Services Limited, which was approved by the Commission in Case No. 98-547.<sup>1</sup> On October 25, 1999, GTE and DSLnet submitted to the Commission an amendment to their interconnection agreement. The amendment and the adoption letter (which appears to comprise the only document memorializing the parties' principal agreement) were negotiated pursuant to the Telecommunications Act of 1996 ( 1996 Act ), 47 U.S.C. Sections 251 and 252. Section 252(e) of the 1996 Act requires the parties to an interconnection agreement adopted by negotiation to submit the agreement for approval to the Commission.

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<sup>1</sup> Case No. 98-547, Approval of the Interconnection Agreement Negotiated by GTE South and Dakota Services Limited Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996. (Order dated December 9, 1998).

The Commission has reviewed the agreement and amendment and finds that no portion thereof discriminates against a telecommunications carrier not a party to the agreement. The Commission is somewhat hesitant, however, to find that the implementation of the agreement is consistent with the public interest, convenience, and necessity without informing DSLnet that it is entitled to adopt the Dakota agreement in its entirety.

In the agreement filed by GTE, DSLnet has agreed to "not seek UNE platforms or already bundled combinations of UNEs."<sup>2</sup> The document also contains GTE's legal conclusions regarding its alleged, lawful right to withhold access that is required by law. Its legal analysis is erroneous. However, as this matter represents the voluntary negotiations between the parties, the Commission will approve the agreement. DSLnet should be aware that GTE has been ordered by this Commission to provide when requested the combined UNE platform where the platform already exists in GTE's network. 47 U.S.C. 251, the Federal Communications Commission ("FCC") rules, the United States Supreme Court, and this Commission require UNEs to be furnished. Moreover, the Supreme Court specifically upheld the FCC rule prohibiting an incumbent local exchange carrier ("ILEC") from breaking apart UNEs when they are ordered by a competing local exchange carrier ("CLEC") in combination.<sup>3</sup> The Commission has consistently reiterated its determination that UNEs are central to providing local exchange service and must be provided by ILECs to CLECs in the manner requested.

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<sup>2</sup> September 22, 1999 adoption letter at 2.

<sup>3</sup> AT&T Corp. v. Iowa Utilities Board, 119 S.Ct. 721 (1999); 47 CFR 315(b).

The Commission's rulings in this regard reflect its consistent interpretation of the Telecommunications Act of 1996.<sup>4</sup>

DSLnet must comply with all relevant Commission mandates for serving in this Commonwealth.

The Commission, having been otherwise sufficiently advised, HEREBY ORDERS that:

1. Subject to DSLnet 's notification to the Commission within 10 days of the date of this Order that it desires to exercise its legal right to revoke this agreement and adopt the entire Dakota agreement, this agreement and amendment negotiated between GTE and DSLnet are approved.

2. DSLnet shall file a tariff for local service prior to providing local service giving 30 days' notice to the Commission and shall comply with all Commission regulations and orders as directed.

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<sup>4</sup> See Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South Incorporated Concerning Interconnection and Resale Under the Telecommunications Act of 1996, Case No. 96-440, Order dated September 1, 1998, at 17 (requiring GTE to permit MCI to order UNEs in combination and stating, "[t]he Commission will not tolerate an ILEC's literally breaking apart network elements that are physically connected in the manner requested by a CLEC"). See also Investigation Regarding Compliance of the State of Generally Available Terms of BellSouth Telecommunications, Inc. With Section 251 and Section 252(d) of the Telecommunications Act of 1996, Case No. 98-348, Order dated August 21, 1998, at 8 (finding "unacceptable" a proposed provision that BellSouth would separate combined elements when a CLEC ordered them in combination and finding that "[s]uch separation and subsequent recombination would serve no public purpose and would increase costs that ultimately would be passed on to the consumer").

Done at Frankfort, Kentucky, this 14<sup>th</sup> day of December, 1999.

By the Commission

ATTEST:

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Executive Director